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WASHINGTON, D.C. 20005-3919
(202) 789-3400
FAX (202) 789-1158

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FILE NUMBER 45691-434(B)

DIRECT DIAL (202) 789-3419

August 13, 1993

BY HAND

Mr. William F. Canton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

NOTICE OF WRITTEN EX PARTE PRESENTATION

Re: CC Dkt. No. 92-77
Notice Of Written Ex-Parte Communication

Dear Mr. Canton:

Enclosed are two copies of a written Ex Parte communication transmitted to Mark Nadel in the above referenced docket.

Sincerely,

Albert Kramer

Albert H. Kramer

AHK:rw
Enclosures

No. of Copies rec'd 0+1
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1201 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3919
(202) 789-3400
FAX (202) 789-1158

KECK, MAHIN & CATE

FILE NUMBER 46158-002

DIRECT DIAL (202) 789-3419

August 13, 1993

BY HAND

Mark Nadel, Esq.
Federal Communications Commission
Room 544
1919 M Street, NW
Washington, DC 20554

Re: Inmate Phone Services/Billed Party Preference
CC Docket No. 92-77

Dear Mark:

I have enclosed some information on the billed party preference issue as it relates to inmate phone services. Enclosed you will find:

1. Excerpts from APCC's Initial Comments in Docket 90-313 (pages 53-60 discuss the unreliability of LEC screening systems). Although these comments were prepared in late 1990, the situation they describe is largely unchanged. LEC screening systems are subject to the same vulnerabilities since these Comments were drafted.

2. The Florida PSC's Petition regarding liability for toll fraud charges and APCC's Comments related thereto. If LEC screening services were reliable, there would be no need for this proceeding.

3. The Commission's Further NPRM in Docket 91-35 and APCC's Comments related thereto. Note in particular the Comments referred to in Paragraph 20 of the Further NPRM.

In addition, one of the members of the Inmate Calling Services Providers Task Force has agreed to see if he can compile or locate some data showing how often a prisoner's calling rights are restricted by excluding certain numbers that the prisoner is allowed to call in order to prevent harassment or unlawful acts. I will forward this data on to you upon receipt.

Also, I recently reviewed Bell Atlantic's ex parte filing of July 23, 1993, in Docket 91-35. (I have enclosed the relevant excerpts.) This filing raises several issues. As you can see from the Local Exchange Routing Guide (the "LERG"), the ANI "07" code applies to a variety of calls requiring special operator handling.[1] In the page captioned "Originating Line Screening," Bell Atlantic explains that a code "such as '07' . . . indicates the calling line is restricted (e.g., inmate) and that operator handling is required." From this sentence it is apparent that "07" is a signal for a number of different kinds of billing restrictions. As Bell Atlantic explains, further screening is a function of the operator service provider's network. Bell Atlantic further informed the Commission that in order to perform this further screening, the operator service provider in question must subscribe to a screening table available from Bell Atlantic. (See the highlighted sections

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[1] You should note that at least a part of the specifications attributed to the "07" code appear to be inaccurate. The LERG statement (at page 143, section 1 (June 1, 1993)) that "the [07] code is used to route the call to an operator or Operator Services System for further screening . . ." is clearly over broad. The code is not "used to route the call," either in the case of a 1+ or a 0 call.

As APCC is informed, the ANI II digits are transmitted with 1+ calls (i.e., directly dialed calls). Yet, it is clear that 1+ calls initiated, for example, from independent public payphones ("IPPs") do not get routed to an operator or operator services system. Otherwise, there would be no 1+ fraud from IPPs. 1+ calls would be routed to an operator who, under the scenario as the LECs have represented it to you, would always have the 07 screening code and would know that they cannot allow the call to be billed to the originating line.

As for "0" calls, it is the dialing sequence that includes the "0" that results in the "routing." The code is information that is supposed to be used to alert the operator or Operator Services System to initiate further screening.

of the enclosed excerpt.)

Many IXCs do not in fact subscribe to these screening table data bases, and IXCs who do subscribe to them in one region may not necessarily subscribe to them in all regions. According to the IXCs with whom we have discussed the issue, the IXC decision is a function of many variables, including the volume of calling they expect to receive at a particular operator center from phones that may carry the "07" code, their risk and fraud experience, etc. For example, some IXCs, as APCC is informed, simply instruct the operator to ask for alternate billing information whenever the operator sees a "07". The IXCs simply take the risk that the alternate billing information they receive will be accurate. An inmate could easily give a fictitious third number to bill the call to and the operator would allow the call to go through.

There are two additional points to be made here. As the enclosed Comments from APCC's September 1990 filing indicate, there are many instances when in fact, the claims of the LECs (including Bell Atlantic) to the contrary notwithstanding, the screening codes do not go through and the "07" code is never received at the operator terminal. Further, the operator service provider must have equipment capable of receiving the screening data, and must have trained, competent operators who know what to do with the data once it is received. Thus, even if we take the LECs at their word and assume the "07" is always transmitted, that screening code can only be as effective as the human operator receiving the code. Compounding these problems, as explained above, is that many operator service providers simply find it to be more efficient to ignore the codes rather than incur the expense that is necessary (in terms of further screening, operator time, specialized equipment, etc.) to make the codes effective.

This brings me to the second point. In theory, when the operator service providers decide not to implement the screening, they should be the ones to bear the liability from any resulting fraud. In fact, as illustrated by the Florida Petition and APPC's Comments, the operator service providers attempt to hold the IPP providers liable for these calls. While it is fine to suggest on a theoretical level that the courts would ultimately determine that the operator service providers should bear the costs, that principle has not yet been established to be the law, and the major carriers take quite a contrary position.

I hope this information is helpful. Please call me if you have any questions.

Best regards,

Albert H. Kramer

AHK/hlh

Enclosures

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Of:	)	
	)	
Policies and Rules	)	CC Docket No. 90-313
Concerning Operator	)	
Service Providers	)	
	)	

INITIAL COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Albert H. Kramer
Wood, Lucksinger & Epstein
2000 M Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 223-6611

Barry Selvidge, Esq.
Bruce Renard, Esq.
Messer, Vickers, Caparello,
French & Madsen
215 S. Monroe Street
Suite 701
Tallahassee, Florida 32303-1876
(904) 222-0720

COUNSEL FOR THE
American Public Communications
Council

September 7, 1990

SUMMARY OF COMMENTS OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL

American Public Communications Council ("APCC") is supportive of the Commission's initial efforts to address issues in the public communications arena. APCC supports the Commission's proposals to require the "branding" of calls and the posting of information about operator service providers ("OSPs"). APCC members accept their responsibility for ensuring that the information is posted.

APCC also believes that consumers should have access to the OSPs and interexchange carriers ("IXCs") of their choice. However, in adopting any unblocking requirements the Commission must address two issues not even raised in the Commission's Notice of Proposed Rulemaking. First, the Commission must address the issue of compensation to competitive public payphone ("CPP") providers. At the moment, CPP providers are the only ones who do not earn revenue from carrier access code calls made over their phones. As carriers who provide the first link for interconnecting end users to the interstate network, CPP providers are entitled to this compensation. The Commission can and should set that compensation in this proceeding. Until more experience is gained and a more definitive solution can be resolved, CPP providers should receive from IXCs the maximum local call rate in the largest number of states, or $.25, for each carrier access code call.

The second issue the Commission must address is fraud. At the moment, fraud is a massive problem for CPP providers. The fraud experienced by CPP providers will be increased if the Commission requires 10XXX access unless the Commission orders the local exchange carriers ("LECs") to provide certain central office based fraud prevention measures. The technology for providing central office based blocking of direct dial international calls, suppressing secondary dial tone, and providing other fraud prevention features is already developed and can be relatively inexpensively and efficiently deployed. The Commission must order the LECs to provide these services since the LECs have no incentive to do so.

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Appendix A:	Includes bills for one (1) phone in the District of Columbia during a four month period, June-September 1989. The bills total $62,429.94.
Appendix B:	Includes bills for one (1) phone in Virginia during a four month period, June-September 1989. The bills total $30,038.45.
Appendix C:	Includes bills for 117 phones in Maryland during a four (4) month period, June-September 1989, the equivalent of 230 separate monthly bills. (Appendix C to be filed under separate cover during the week of September 10-15, 1990.)
Appendix D:	Includes bills for 119 phones in the District of Columbia during a four (4) month period, June-September 1989, the equivalent of 304 separate monthly bills. (Appendix D to be filed under separate cover during the week of September 10-15, 1990.)
Appendix E:	Includes bills for 122 phones in Virginia during a four (4) month period, June-September 1989, the equivalent of 301 separate monthly bills. (Appendix E to be filed under separate cover during the week of September 10-15, 1990.)
Appendix F:	Includes bills from three (3) Georgia phones during a two (2) month period.
Appendix G:	Includes a complaint filed by AT&T against United Artist Payphone Corp., in U.S. District Court, to recover $1,233,874.50.
Appendix H:	Includes a complaint filed by AT&T against North American Industries of New York, in U.S. District Court, to recover $1,095,563.98.
Appendix I:	Includes documents showing nine (9) other lawsuits filed by AT&T against CPP's to recover $1,095,563.98 for fraudulent phone calls.
Appendix J:	Includes bills for two (2) phones in Texas during a two (2) month period, May-June 1990. The bills total $50,289.49.
Appendix K:	Includes operated assisted calls and credit card calls billed to pay phones.

The most appropriate benchmark for establishing an "access" charge for 800, 950, and 10XXX-0+ calls would be the amount actually earned by CPP providers in the marketplace on the calls that these access code calls typically replace, i.e., 0+ calls to the presubscribed OSP.[34/] As discussed in Exhibit I-B, the responses to APCC's survey indicate that these commissions average between 44 cents and 78 cents per call. Another appropriate benchmark for access code call compensation would be the revenue earned by CPP providers on other types of calls. Even if it is argued that the compensation for access code calls should be less than the compensation paid by the presubscribed operator service provider, it must be recognized, at a minimum, that a caller who places an access code call is occupying a payphone that otherwise would be available for another revenue-producing call. Thus, the level of compensation for 800, 950 and 10XXX calls certainly should not be lower than the revenue received by CPP providers on local calls. In order to have a uniform, easy-to-apply compensation level, on an interim basis, and to avoid protracted disputes prior to the implementation of the Commission's proposed rules, APCC suggests that the amount of compensation prescribed could reasonably be set as equal to the amount

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34/ Analogously, in the long history of the Commission's IXC interconnection proceedings discussed above, the benchmark that was consistently sought out as a guide to determining LEC compensation was the compensation that was paid by IXCs such as AT&T and Western Union, who had already been provided with interconnection. Although this compensation could not always be identified, and was arguably to be discounted if it was paid for a superior form of access, it was consistently viewed by the Commission as a relevant factor and, indeed, one of the main purposes of the access charge proceeding was to eliminate discriminations among the various access charges assessed by LECs. In prescribing fair compensation for CPP providers who are required to interconnect with IXCs, it is similarly appropriate to look to the compensation received from the IXC that already is interconnected. As a first approximation of the quantum meruit, the compensation currently being paid is clearly relevant. See ENFIA, supra, 71 FCC 2d at 458.

set by the largest number of states as the maximum charge for a local call. At present, this amount would be 25 cents per call, but it should be allowed to vary in the event that the maximum charge in the largest number of states increases or decreases due to state regulatory actions. This will provide a form of "quantum meruit" interim relief for CPP providers, pending the development of a more sophisticated approach.[35/] This was the approach approved in ENFIA, supra. As an incidental benefit, this interim compensation will reduce the need for the Commission to rely on its enforcement "stick" to achieve compliance with the new rules.

As far as the mechanism for collecting compensation is concerned, each CPP provider should have responsibility for billing its charges and collecting them from IXCs, through whatever mechanisms they select. However, the LECs' automated message accounting systems can provide the call detail necessary to adequately identify access code calls. The LECs should be required to make this data available to CPP providers on request.

B. Fraud.

1. Background: 10XXX Access v. 950 and 800.

10XXX access is an outgrowth of the divestiture decree's requirement that the BOCs offer access to all IXCs equal to that provided to AT&T. U.S. v. AT&T, 552 F. Supp. 131, at 232-233 (D.D.C., 1982). A principal feature of the pre-divestiture preferential access given to AT&T was that it included a network generated billing instruction with each long

35/ There is a sense in which an access code call provides the same value of service as a local call, since it connects to the POP or equal access tandem, the termination point of local service.

distance call. Under equal access, each IXC is now entitled to, and does obtain, access that automatically includes this same network-generated billing instruction.

The network-generated billing instruction is known as the ANI, and it identifies the line number to which a call originating from a telephone system is to be billed. (Generally, the ANI is the same as the originating line number.) Unless it is overridden by instructions given to an operator, calls are billed to the ANI.

This feature -- automatic billing instructions -- is one of the primary features that makes 10XXX so attractive in the private phone environment. It is designed to allow calls to be billed to the ANI automatically without any operator intervention or a second dial tone. The ANI is passed on to the IXC automatically for billing purposes and is all that's required. In the private communications environment, it may be quite appropriate to rely on this network-generated billing instruction for billing all calls originating from the private communications system, unless other billing instruction are given by the caller. There is little need for the carrier to screen unauthorized calls from private phones.

Yet those features are exactly what makes the 10XXX protocol so undesirable for use in a public communications system. In the public environment, the "default option" of relying on the network-generated billing instruction, i.e., the ANI, can be quite unfair to the facilities owner, such as a CPP provider.

The protocol feature most desired by a provider of public communication facilities is one that requires a caller either to pay directly for a call or, in the case of a non-sent paid call, to provide billing information to an IXC before any call can be completed. This permits the public communications facility provider to avoid being stuck in the middle -- and

charged for the call -- when a caller should be charging a call to another source but instead manages to bill it fraudulently to the ANI. Any non-sent paid toll call -- whether going to the CPP owner's preferred OSP or another IXC -- requires the carrier to be responsible for arranging payment directly with the caller.

The 950 and 800 protocols meet these standards. 800 and 950 pre-dated equal access. As such, they were "unequal access." One of the major "unequal" aspects of this "unequal" access was that ANI was not, or at least not consistently, generated. A carrier relying on 950 or 800 had no automatic, network-generated billing mechanism. Thus, 800 and 950 do not permit calls to be processed unless the caller, not the network, supplies suitable billing information. They require the caller to make billing arrangements with the carrier before a call is carried. The ANI is not and cannot be used as a default billing option. The CPP provider is no longer in the middle of the transaction; it is a transaction between the caller and the carrier.

There is thus a sense in which the feature that makes the 10XXX access protocol so attractive for use from private phones makes it inferior for use from public phones. Public communications systems have different needs than private facilities. A single protocol system is not likely to be the most desirable for both private and public facilities[36] -- unless safeguards are developed to protect the public communications facilities when protocols suitable for use in the private environment are used in the public environment.

36/ It was this paradox -- that a single protocol was not necessarily suited to uses in all environments -- that was a major contributor to the pre-divestiture imbalance in favor of AT&T. AT&T's competitors were forced to rely on the 950 and 800 protocols in the private communications environment even though they are more suited to the public environment.

A comparison between the 10XXX protocol and the 950 and 800 protocols makes clear why this is so. Callers using 950 or 800 are forced to deal directly with the IXC and arrange the billing with the IXC. 950 and 800 force the caller to provide his or her billing information directly to the IXC. The IXC must accept or reject the call based on that information, not on the ANI. The CPP provider is not part of the billing loop and cannot be held accountable for payment for the call. The CPP owner is free of liability.

With 10XXX, the IXC has the default option of billing the originating number, in this case the CPP provider. The CPP provider is forced to act as guarantor for caller payments, since he or she may be liable for calls whenever a 10XXX call happens to get into the network without the IXC having forced the caller to provide the IXC with sufficient billing information. CPP providers should not be obliged to accept that responsibility. They are entitled to adequate fraud protection if they are required to allow 10XXX access.[37]

2. The Magnitude Of The Fraud Problem.

37/ 10XXX dialing is frequently defended on the ground that it is much more convenient than other forms of access. But 10XXX calling is not that much more convenient than other dialing protocols. The 10XXX protocol does save two digits over a 950 call (30 as opposed to 32) and six digits over an 800 call (30 as opposed to 36). (This assumes the calling card for each carrier uses 14 digits. Some carriers may be using less than 14 digit calling card numbers.) It is also true that a 10XXX call can be processed a second or two faster than a call utilizing the 950 protocol because there is no need for a second dial tone. But this marginal time saving only occurs because billing can be made to the ANI. That is, time is saved only at the cost of increasing the vulnerability and exposure of public facilities to 10XXX fraud. IXCs desiring to market this time saving should bear the risk of the increased fraud to which CPP providers are exposed as a result of allowing the 10XXX protocol.

The Commission has recognized that some exception to its proposed prohibition on call blocking may be necessary for 10XXX-1+ because of the potential for fraud. The Commission has not, however, fully appreciated the scope or dimensions of the fraud problems. In this section, APCC discusses the fraud problem.

Fraud is a massive problem for CPPs. Appendices A - J contain a sampling of the fraud experienced by CPPs.

Appendix A is the phone bills incurred during a four month period from June 1989 to September 1989 by a single payphone located in Washington, D.C. These phone bills contain $56,107.49 in fraudulent toll calls and run for 415 pages.

Appendix B is the phone bills incurred during the same four month period by a single payphone located in Virginia. These bills contain $30,038.45 in fraudulent toll calls and run for 102 pages.

Appendices C-E contain a selected sample of phone bills from CPPs located in Maryland, Washington, D.C. and Virginia, respectively, during the same four months. All of the phones whose bills are contained in Appendices A-E are owned by one CPP provider. Together this sample of 358 phones incurred $ 1,884,767.63 of fraudulent telephone calls -- virtually all of it from international calls carried over AT&T's facilities.[38/] The Maryland calls (Appendix C) account for $410,217.80 from 117 phones.[39/] The Washington, D.C.

38/ Because Appendices C-E run over eight thousand pages, only one copy will be filed with the Commission. This copy will be filed during the week of September 10, 1990.

39/ While there should be 468 phone bills (117 phones with a phone bill for each month), there are only 230 phone bills because the bills for some of the months were unavailable. The amount of fraud is thus understated.

calls (Appendix D) account for $766,160.30 from 119 phones.[40/] The Virginia calls (Appendix E) account for $708,389.53 from 122 phones.[41/]

International toll fraud is not limited to AT&T nor the Mid-Atlantic region. Appendix F contains the bills incurred during a two month period by three payphones located in Georgia. Of the $48,266.69 in fraudulent calls, $19,538.99 worth were made over U.S. Sprint. Further, since AT&T was the presubscribed primary interexchange carrier (PIC), these calls must have reached the U.S. Sprint network by 10XXX access. Similarly, $10,387.66 in fraudulent charges for phone calls on the phone bills were carried over MCI, who was not the presubscribed PIC.[42/]

These vendors' experiences are not isolated instances. The Commission already has pending a complaint filed by United Artist Payphone Corporation (ICB Number IC-90-04876) to attempt to block collection of $1,233,874.50 of fraudulent toll calls. AT&T has in turn sued to collect this same amount from United Artist in United States District Court. Appendix G. Appendix H is a complaint filed by AT&T in United States District Court against a different New York CPP provider seeking to collect $1,095,563.98 for fraudulently

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40/ While there should be 476 phone bills (119 phones with a phone bill for each month), there are only 304 phone bills because the bills for some of the months were unavailable. The amount of fraud is thus understated.

41/ While there should be 488 phone bills (122 phones with a phone bill for each month), there are only 301 phone bills because the bills for some of the months were unavailable. The amount of fraud is thus understated.

42/ As detailed below, although all the charges on these phone bills are shown as direct dial calls, subsequent investigation through examination of telephone company records revealed that in fact many of the calls were made by using a 10XXX prefix and direct dialing the calls. See Exhibit II-E (Beary Declaration), Att. 4. In other cases, the calls were placed by dialing 10XXX-0 or 10XXX-0+, i.e., through the IXC operator.

placed toll calls from 357 different phones during various months over a thirty one month period. AT&T has filed at least nine similar lawsuits of which APCC is aware against other CPP providers, seeking to collect $1,810,606.23 in fraudulent charges. Appendix I.

APCC could continue to multiply examples from state after state from multiple time periods and to increase the volume of anecdotal material cumulated.[43/] However, we believe no useful propose would be served by doing so at this time. First, we believe that this small sample, representing only some of the phones of three CPP providers, makes the point: fraud is massive.

Further, no matter how much anecdotal evidence CPP produces, there is no way APCC can arrive at an actual figure for the amount of fraud. First, most APCC members are reluctant to discuss the amount of fraud they have experienced because they regard it as proprietary, and have not been willing to provide it even under promises of confidentiality. Second, some CPP providers fear reprisal from AT&T and/or the LEC in the form of increased litigation and/or harassment if they come forward. Third, while APCC has many large payphone providers as members, there are many payphone providers who are not members of APCC. Further, many vendors do not know how much fraud they have outstanding. When a vendor protests a telephone bill, the vendor typically does not receive a direct response to the protest and the request that the protested calls be removed from the phone bills. From time to time, some credits may appear on a phone bill, but the credits are periodically irregular, generally unexplained, and do not match the amounts under protest.

43/ See e.g., Appendix J (Texas), for an additional example.

APCC has done what it can to document the scope of the fraud problem. If the Commission requires further information about the exact amount of charges contested on grounds of fraud, it should turn to the carriers. As billing agents for the IXCs, the LECs certainly know the amount of the bills they have rendered that are being contested based on claims of fraud. Alternatively, the three major IXCs, AT&T, MCI and U.S. Sprint, also have this data, since it is their charges that are being contested. (See Beaumont Branch of the NAACP v. FCC, 854 F.2d 501, 507-510 (D.C. Cir. 1988); California Public Broadcasting Forum v. FCC, 752 F.2d 670, 679 (D.C. Cir. 1985); Bilingual Bicultural Coalition, Etc. v. FCC, 595 F.2d 621, 630 (D.C. Cir. 1978) (en banc); Citizens Committee to Save WEFM v. FCC, 506 F.2d 246, 265-266 (D.C. Cir. 1974) (en banc).)

In the absence of better information, the Commission must accept the data produced by APCC. Projecting the data available to APCC indicates that the amount of fraud experienced by CPPs during 1989 was about $133,000,000.[44/] While the level of fraud has probably abated due to measures taken by CPPs and the availability of some telephone company provided protections (see Section II(B)(4)(a), at 64-67, infra), fraud continues at

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44/ The telephone bills in Appendix C for fraudulent calls from payphones in Maryland show $410,217,80 in fraudulent charges from only 117 of the more than 3,700 phones in Maryland over an average of less than two months. Even if there were no other fraud from any other payphones in Maryland, which is clearly not the case, this two month average for the state of Maryland would still represent an average of $55.43 per phone per month for the 3,700 phones in Maryland. ($410,217.80 divided by 3,700 phones divided by 2 months = $55.43) At this rate the average phone wold suffer $55.43 x 12 = $665.16 in fraud per year.

If one assumes that payphone fraud is as prevalent in the rest of the nation as it is in Maryland, then the approximately 200,000 competitive private payphones in the nation suffer 200,000 x $55.43 = more than $11 million in fraud per month, or 200,000 x $665.16 (for 12 months) = more than $133 million per year.

levels that will destroy CPP providers if this Commission does not require the LECs to take measures to prevent the fraud.

There remains the question of how the CPP providers know these massive bills reflect fraudulent telephone calls. There are several ways. First and most simply, the phones over which these calls were made were programmed to reject both 011 and 10XXX-011 calls; yet the overwhelming bulk of these calls are international and the phones had to be defrauded to place them. Second, the CPP providers simply are not collecting the revenues that are reflected in the phone bills in the coin boxes. Were any fraction of these calls being paid for, the CPP's would be repeatedly calling in to network control for coin collection because of full coin boxes. A mere glance at some of the telephone bills in the appendices shows that hundreds of dollars of calls were made sequentially. Further, the sheer size of the charges associated with some of the calls and repeated calls, in close temporal proximity to each other, to a series of repeated phone numbers makes it highly dubious that the caller came to the phone with the hundreds of quarters necessary to complete these calls -- quarters which, as stated above, were not in the coin boxes. Finally, neither the LECs nor IXCs has to date questioned whether the calls were fraudulent. Rather, as discussed below (Section II(B)(4)(b), at 70) they have contended that the CPP provider is responsible for the calls in any event.

3. The Sources Of Fraud.

To appreciate fully the sources of the fraud, it is necessary to catalog various types of fraud, and in some cases, to follow the path of calls initiated by various dialing sequences

through a CPP and into the network.[45] For purposes of the discussion which follows, it is assumed that the CPP from which the call is originating has the technological capability and is programmed to distinguish between 10XXX-1+ calls, on the one hand, and 10XXX-0 or 10XXX-0+ calls on the other, and will allow the latter while blocking the former.[46] (As discussed in Section III, in fact many CPPs cannot distinguish between these types of calls, and/or must allow all 10XXX calls or allow none.)

a. Dial Tone Regeneration.

Dial tone regeneration (DTR) (or secondary dial tone (SDT) as it is also known) occurs when the called party hangs up (puts the phone in an "on-hook state") but the calling

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45/ The routing information in the various sections presented in the text is derived from various proceedings, Bellcore materials, interviews or conversations with telephone company, Bellcore, IXC, and CPP provider personnel, and miscellaneous other sources. Part of the network and routing information discussed in the text was put on the record in a preliminary form in National Telephone Service, et al., Petitions for Waivers of Limited Portions of the Call Blocking Prohibition. Enf. 89-09, by letter and request for a supplemental notice. (Letter to Howard Wilchens from Albert H. Kramer, May 11, 1989). In that request, APCC sought to have the Commission require the LECs and carriers to address the issues raised by the network routing and processing of calls through the network and to provide information necessary to address fraud issues and 10XXX unblocking. No action was taken on the request.

46/ The NPRM discusses only 10XXX-0+. A 0+ call that the caller allows to "time out" to the operator (instead of responding to the "bong" prompt by inserting billing information) is, for most purposes relevant here, the functional equivalent of a "0" call. While there are differences in some limited but important situations, APCC discusses both 10XXX-0 and 10XXX-0+ in these comments. As explained below, the measures taken to address fraud associated with each generally also address fraud problems associated with the other.

party remains off-hook. After a certain interval of time (generally about 10 to 20 seconds), the calling party will again obtain a dial tone, and can place another call.[47/]

In the CPP environment, DTR could, if unchecked, lead to disastrous fraud. Normally, when a caller places a call at a CPP, the caller is constrained by the fraud prevention devices built into the phone and the phone's collection devices so long as the caller is "behind" the phone's built-in security measures. A caller initiating a call at a CPP receives a dial tone from the phone upon lifting the handset. Once the caller completes the dialing sequence, the phone processes the digits. If the call is a blocked call, such as a 10XXX-1+[48/], the phone informs the caller that the call cannot be processed. If the phone can allow the call and the call is sent-paid, the phone "rates" the call and, after collecting the money, sends the call to the public network; if the call is a 0 call, the phone sends it to the operator for appropriate processing. In either event, the caller is now "beyond", or "in front of", the phone's protective circuitry and in the public network. With DTR, a caller could place a call, wait for the called party to hang up, and upon hearing the regenerated dial tone, simply place another call. Since the dial tone would be from the network and the caller is "beyond", or "in front of" the protection built into the phone, the caller would presumably be able to place calls "free" to him or her -- anywhere in the world, of an unlimited duration for as long as the caller desired -- and then simply hand the receiver to another caller, who

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47/ Some PBXs (and PBX-like systems including Centrex) suppress this secondary dial tone because once a call is disconnected at the terminating end (i.e., the called party hangs up), the "system", not the public network, provides the dial tone heard by the calling party.

48/ See note 84, infra.

could repeat the process. Of course, all these calls would be charged to the ANI, i.e., the originating line, and billed to the CPP provider.

To guard against SDT fraud, the typical CPP is programmed to read a "wink" that is generated from the central office. As described above, about 10 to 20 seconds after the called party hands up, the dial tone is regenerated. However, in the interval just prior to the time dial tone is regenerated, there is a change in the amount of current on the line. This change in current, which lasts a fraction of a second, is associated with the functions the network performs to regenerate the dial tone. This "wink" is detected by the CPP, and it signals the CPP to "reset", so that the phone "disconnects" from network dial tone. The caller is no longer beyond (or "in front of") the CPP functionality, but back "behind" it. Any call that is made will be treated as though the caller had just lifted the CPP's hand set off hook and was initiating a call for the first time, and be subjected to the phone's built-in security measures.

It is apparent that the wink is vital to preventing fraud from DTR. A number of problems have arisen with this wink. First, some LECs are changing the switches in their central offices, generally from analog to digital. Often these change outs result in a loss or alteration of the wink, with the result that the CPPs are rendered extremely vulnerable to DTR fraud. Apart from the fact that APCC is aware of no LEC that has provided any notice of these change outs to CPP providers,[49] the attitude of the LECs seems to be that the loss of wink is not their problem.[50] As a result, CPP providers have had to take various steps

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49/ See 47 CFR § 68.110 (b).

50/ See Exhibit II-A (Angel Declaration).

to prevent DTR fraud.[51/] These steps generally put the CPPs at a competitive disadvantage, and generate customer and end user ill will.[52/]

Other problems with wink can arise from the interaction of various CPE and private networks with the public network. In a recent episode, a credit card company had established a number for merchants to call to verify credit card transactions. The number was called automatically by a modem on the retailer's premises with verification of the credit card transaction via a "modem to modem" interconnection. A caller reaching the number through a standard telephone would normally be disconnected. However, the disconnect signal given by the modem altered the wink, preventing its proper return to the originating telephone. By dialing the number from a CPP, a caller could perpetrate fraud. The problem was partially defeated by a special software program developed by payphone manufacturers.[53/]

b. 10XXX Fraud.

51/ See Exhibit II-B (Edwards Declaration) for a typical example.

52/ As detailed in Exhibit II-B, these steps typically include deadening the key pad after a certain time interval sufficient to allow a calling card dialing sequence (or after a certain number of digits), rendering the key pad unusable. The difficulty with this step is that it means the key pad cannot be used for accessing voice mail boxes or using other interactive features of the called number. Further, it may not defeat frauders because a determined frauder will simply use a tone simulator, making the key pad unnecessary. To defeat this latter phenomenon, it would be necessary to deaden the microphone in the handset, which would make it impossible to have a conversation.

53/ See Exhibit II-C (Scheer Declaration).